

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director



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02 SEP 23

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TN REGULATORY AUTHORITY
DOCKET ROOM

TO: Director Deborah Taylor Tate
Director Pat Miller
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services Division
Ed Mimms, Manager, Do Not Call Program
Lynn Questell, Counsel

DATE: September 20, 2002

SUBJECT: Settlement with Advantage Investors Mortgage Corporation
(Docket No. 02-00902)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Advantage Investors Mortgage Corporation (referred hereafter to as "Advantage") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA § 65-4-401 *et seq.* Advantage registered with the Tennessee Regulatory Authority ("Authority") as a solicitor on August 27, 2001.

This is the second settlement with Advantage that the Staff has brought to the Authority for ratification. The first Settlement (Docket No. 01-00916), which was approved by the Authority on February 5, 2002, required Advantage to pay the Authority \$12,000 for eight (8) violations of TCA § 65-4-401 *et seq.* Eight (8) additional complaints have been registered against Advantage with the Authority alleging that the company violated TCA § 65-4-401 *et seq.* since the settlement of Docket No. 01-00916.¹ This second Agreement requires the company to make a payment of \$13,600 to the Authority within thirty (30) days of Authority ratification of the Settlement along with assurances of full compliance with applicable state law. A representative of Advantage will be telephonically available at the October 7, 2002 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Advantage.

Staff submits the attached Settlement Agreement for your deliberation at the October 7, 2002 Authority Conference.

cc: Chairman Sara Kyle, Richard Collier, General Counsel, Michael V. Rea, Advantage
CFO

¹ The first complaint in the instant docket was registered with the Consumer Services Division on May 10, 2002, four months after the settlement was approved in Docket No. 01-00916.
Telephone (615) 741-2904, Toll-Free 1-800-342-8359, Facsimile (615) 741-8953
www.state.tn.us/tra

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

ADVANTAGE INVESTORS
MORTGAGE

)		
)		
)	DOCKET NO.	02-00902
)		
)	DO-NOT-CALL	T02-00298
)	PROGRAM	T02-00300
)	FILE NUMBERS	T02-00302
)		T02-00303
)		T02-00304
)		T02-00305
)		T02-00332
)		T02-00379

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Advantage Investors Mortgage ("Advantage" or the "Company"). This Settlement Agreement, which pertains to eight (8) complaints received by the CSD alleging that Advantage violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07, is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint (T02-00298) on May 10, 2002, alleging that the complainant, a person properly listed on

the Do-Not-Call register, received a telephone solicitation from Advantage on May 7, 2002. The CSD provided Advantage with notice of this complaint on May 20, 2002.

The CSD's investigation in this docket continued after it received a second complaint (T02-00302) on May 20, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 13, 2002. The CSD provided Advantage with notice of this complaint on May 21, 2002.

The CSD received its third complaint (T02-00303) on May 20, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 9, 2002. The CSD provided Advantage with notice of this complaint on May 21, 2002.

The CSD received its fourth complaint (T02-00304) on May 20, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 10, 2002. The CSD provided Advantage with notice of this complaint on May 21, 2002.

The CSD received its fifth complaint (T02-00305) on May 20, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 10, 2002. The CSD provided Advantage with notice of this complaint on May 21, 2002.

The CSD received its sixth complaint (T02-00332) on May 24, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 15, 2002. The CSD provided Advantage with notice of this complaint on May 24, 2002.

The CSD received its seventh complaint (T02-00336) on May 30, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 15, 2002. The CSD provided Advantage with notice of this complaint on May 30, 2002.

The CSD received its eighth complaint (T02-00379) on June 24, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Advantage on May 8, 2002. The CSD provided Advantage with notice of this complaint on June 24, 2002.

These notices were not the first contact between Advantage and CSD. In 2001, the CSD received eight (8) complaints from Tennessee consumers properly registered in the Do Not Call Program alleging that Advantage had violated Tenn. Code Ann. § 65-4-404. The CSD investigated the complaints and contacted Advantage. Advantage registered as a telephone solicitor on August 27, 2001.

The CSD and Advantage ultimately reached an agreement to settle the eight (8) complaints, which were incorporated into TRA Docket No. 01-00916. The Settlement Agreement of Docket No. 01-00916 required Advantage to pay \$12,000 within thirty (30) days of the Directors' approval of the Settlement Agreement and to fully comply with applicable state law. On February 11, 2002, Advantage sent to the Authority \$12,000 in payment of the settlement amount. The Directors approved the Settlement Agreement in TRA Docket No. 01-00916 on February 5, 2002 and that determination was memorialized in an Order issued on March 25, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and

desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Advantage in this proceeding is sixteen thousand dollars (\$16,000), arising from these eight (8) telephone solicitations.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Advantage is a company employing approximately five hundred workers nationwide with its corporate headquarters located in Dallas, Texas. During the investigation of the complaint, Advantage exhibited good faith in its efforts to resolve this matter. After receiving notice of the complaint, Advantage began an extensive investigation and immediately contacted the CSD. Company officials also notified the CSD that they were cooperating with federal law enforcement agencies as a result of alleged business practices taking place at that location. Advantage did not dispute that the calls were made and expressed an interest in resolving this matter. Company officials notified the CSD they had terminated its employees and closed the Advantage office in Reston, Virginia. The CSD determined through its investigation, the toll-free telephone number provided in each of the solicitation calls terminated at the Reston, Virginia office.

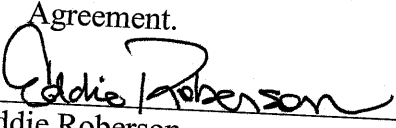
Advantage is registered in the Tennessee Do Not Call Program and receives a monthly copy of the Do-Not-Call register. The company renewed its registration on June 27, 2002 for the 2002-2003 registration period.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Advantage agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Advantage does not dispute that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Advantage has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Advantage contacted CSD and expressed an interest in resolving this matter. Advantage has been registered with the TRA as a telephone solicitor since June 11, 2001, and receives a monthly copy of the Do-Not-Call register.
3. Advantage agrees to pay thirteen thousand six hundred dollars (\$13,600.00) in settlement of the complaint, and agrees to remit that amount to the TRA no later than thirty (30) days after the date the Directors of the TRA approve this Settlement Agreement.¹
4. Advantage agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. Upon payment of the amount of thirteen thousand six hundred dollars (\$13,600.00) and full compliance with the other terms and conditions of this Settlement Agreement, Advantage is excused from further proceedings in this matter.

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-00902.

5. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
6. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.
7. Advantage agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
8. In the event that Advantage fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Advantage shall pay any and all costs incurred in enforcing the Settlement Agreement.


Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

9-18-02
Date


Signature

MICHAEL V. REA
Print Name

SR VP, CFO
Print Title

9-3-02
Date